IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 11, 2008 Session

MARY HELEN WHITE v. BI-LO, LLC, D/B/A BI-LO

Appeal from the Circuit Court for Coffee County
No. 35,797 Jerry Scott, Sr. J.

No. M2007-02698-COA-R3-CV - Filed September 26, 2008

Plaintiff, who was injured in a slip and fall, appeals the dismissal of her claim for personal injuries against a grocery store. The trial court awarded summary judgment based upon a finding that there were no genuine issues of material fact and that plaintiff had failed to establish the elements of a premises liability action. Plaintiff appeals arguing that there is a sufficient dispute of material fact over whether the grocery store had actual or constructive notice that a dangerous condition existed. We affirm the trial court's finding that the grocery store is entitled to judgment as a matter of law because there is no evidence in the record that the grocery store had actual or constructive notice of the dangerous condition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Liberti A. Snider, Shelbyville, Tennessee, for the appellant, Mary Helen White.

Andy Rowlett and Patrick Witherington, Nashville, Tennessee, for the appellee, BI-LO, LLC, d/b/a BI-LO.

OPINION

The claim of Mary White, the plaintiff, arises from an incident which occurred on May 7, 2004 when she was shopping at the BI-LO grocery store in Tullahoma, Tennessee. Ms. White and her ex-husband had stopped at the store to pick up some soda that was on sale. As they were walking down one of the aisles, Ms. White stepped on an unseen spice bottle causing her to fall and injure her left knee. Neither Ms. White nor her ex-husband noticed any BI-LO employees on the aisle prior to her fall.

Ms. White timely filed this action against BI-LO alleging that the presence of the spice bottle on the floor constituted a dangerous condition and that BI-LO had constructive knowledge of the dangerous condition because the spice bottle had been on the floor a sufficient period of time to have

been discovered in the exercise of due care. She also contended that BI-LO breached its duty to her by failing to remedy the situation before her injury. Following discovery, BI-LO moved for summary judgment alleging that Ms. White had failed to establish the essential elements of a premises liability claim, specifically that BI-LO had actual or constructive notice of the spice bottle being on the floor.

Discovery revealed that BI-LO performed hourly inspections of the aisles in the store. In support of its motion for summary judgment, BI-LO produced an inspection report from the day of the incident showing that the store manager had performed hourly inspections, the last of which occurred at 9:26 a.m. and that the aisle was clean of any merchandise or debris at that time. Ms. White's incident occurred nineteen minutes later, at 9:45 a.m. It is undisputed that the spice bottle fell or was dropped during the nineteen minute interval. Why it fell or who caused it to drop is unknown, and there is no evidence that a BI-LO employee caused the spice bottle to be on the floor or that any employee had actual knowledge that it was on the floor prior to Ms. White's fall.

Following the hearing on BI-LO's Motion for Summary Judgment, the trial court stated the key issue was whether Ms. White had alleged facts that BI-LO's conduct fell below the standard of care amounting to a breach of its duty of care. The trial court found that she had failed to assert facts which demonstrated actual or constructive notice and, therefore, BI-LO was entitled to summary judgment. Ms. White appeals.

STANDARD OF REVIEW

The issues were resolved in the trial court upon summary judgment. Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). We consider the evidence in the light most favorable to the non-moving party and resolve all inferences in that party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). When reviewing the evidence, we first determine whether factual disputes exist. If a factual dispute exists, we then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993); *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

Summary judgments are proper in virtually all civil cases that can be resolved on the basis of legal issues alone, *Byrd v. Hall*, 847 S.W.2d at 210; *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001); however, they are not appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. The party seeking a summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that it is entitled to judgment as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d at 695. Summary judgment should be granted at the trial court level when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion, which is the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn.

2002); *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001). The court must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, discard all countervailing evidence, and, if there is a dispute as to any material fact or if there is any doubt as to the existence of a material fact, summary judgment cannot be granted. *Byrd v. Hall*, 847 S.W.2d at 210; *EVCO Corp. v. Ross*, 528 S.W.2d 20 (Tenn. 1975). To be entitled to summary judgment, the moving party must affirmatively negate an essential element of the non-moving party's claim or establish an affirmative defense that conclusively defeats the non-moving party's claim. *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

ANALYSIS

To prevail in a negligence action, the plaintiff must establish (1) a duty of care owed by the defendant to the plaintiff; (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause. *Satterfield v. Breeding Insulation Co.*, ___ S.W.3d ___, No. E2006-00903- SC-R11-CV, 2008 WL 4135605, at *4 (Tenn. Sept. 9, 2008) (citing *Naifeh v. Valley Forge Life Ins. Co.*, 204 S.W.3d 758, 771 (Tenn. 2006); *Draper v. Westerfield*, 181 S.W.3d 283, 290 (Tenn. 2005)).

The first essential element that must be established by Ms. White, whether BI-LO owed a duty to her based on the facts of this case, is a question of law, which is to be determined by the court, not a jury. *See Satterfield*, 2008 WL 4135605, at *4 (citing *West v. E. Tenn. Pioneer Oil Co.*, 172 S.W.3d 545, 550 (Tenn. 2005); *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993)); *see also Carson v. Headrick*, 900 S.W.2d 685, 690 (Tenn. 1995). The court serves as "a gate-keeper" and may exclude a claim if it finds, as a matter of law, that the defendant does not owe a duty to the plaintiff.[1] *Satterfield*, 2008 WL 4135605, at *13.

In its very recent opinion in *Satterfield v. Breeding Insulation Company*, the Tennessee Supreme Court explained that

> Duty is a legal obligation to conform to a reasonable person standard of care in order to protect others against unreasonable risks of harm. *Burroughs v. Magee*, 118 S.W.3d 323, 328-29 (Tenn. 2003); *Staples v. CBL & Assocs*., 15 S.W.3d 83, 89 (Tenn. 2000). As a general rule, persons have a duty to others to refrain from engaging in affirmative acts that a reasonable person "should recognize as involving an unreasonable risk of causing an invasion of an interest of another" or acts "which involve[ ] an unreasonable risk of harm to another." Restatement (Second) of Torts §§ 284, 302, at 19, 82 (1965). Thus, if an individual "acts at all, [he or she] must

[1] The existence of a legal duty is a question of law that requires consideration of whether "such a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of others – or, more simply, whether the interest of the plaintiff which has suffered invasion was entitled to legal protection at the hands of the defendant." *Coln v. City of Savannah,* 966 S.W.2d 34, 39 (Tenn. 1998) (citing *Bradshaw v. Daniel*, 854 S.W.2d 865, 870 (Tenn. 1993) (quoting W. Page Keeton, *Prosser & Keeton on the Law of Torts*, § 37 at 236 (5th ed. 1984)).

> exercise reasonable care to make his [or her] acts safe for others." Restatement (Second) of Torts § 4 cmt. b, at 8. The core of negligence is the violation of this requirement by engaging in "behavior which should be recognized as involving unreasonable danger to others." W. Page Keeton, *Prosser and Keeton on the Law of Torts* § 31, at 169 (5th ed.1984).
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> These rules do not, however, require that persons always act reasonably to secure the safety of others. Rather, they serve a more limited role as restraints upon a person's actions that create unreasonable and foreseeable risks of harm to others. Expounding upon this point more than a century ago, Professor Francis H. Bohlen asserted that "[t]here is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance, between active misconduct working positive injury to others and passive inaction, a failure to take positive steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant." [footnote omitted] While the primacy of this distinction is certainly subject to debate, that it has played a significant role in the formation of the law of negligence is beyond reasonable dispute.

Satterfield, 2008 WL 4135605, at *4. Later in the opinion, the Supreme Court went on to explain that "[i]n most cases today, prior court decisions and statutes have already established the doctrines and rules governing a defendant's conduct. [footnote omitted] Generally, the presence or absence of a duty is a given rather than a matter of reasoned debate, discussion, or contention."[2] *Id.* at *11.

Prior court decisions have established the doctrines and rules of law governing the duties of an owner of a business premises and under what circumstances the owner does and does not owe a duty to a customer. In this regard, it is firmly entrenched in Tennessee jurisprudence that owners of business premises are not insurers of their customers' safety. *Psillas v. Home Depot, U.S.A., Inc*., 66 S.W.3d 860, 864 (Tenn. Ct. App. 2001) (citing *McClung v. Delta Square Ltd. P'ship,* 937 S.W.2d 891, 902 (Tenn. 1996)*; Shofner v. Red Food Stores (Tenn.), Inc.*, 970 S.W.2d 468, 470 (Tenn. Ct. App. 1997)). Accordingly, owners of business premises do not owe a duty to protect their customers from any and all risks. Nevertheless, "premises owners have a duty to use reasonable care to protect their customers from unreasonable risks of harm." *Id.* (citing *Rice v. Sabir*, 979 S.W.2d

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[2]The *Satterfield* court further commented that the common law does however

> grow to accommodate new societal realities and values – or simply better reasoning – as it moves toward refinement and modification with the aim of improving while maintaining a sufficient stability so as to seek, and one hopes, to find, prudent reformation as opposed to anarchic revolution. When the existence of a particular duty is not a given or when the rules of the established precedents are not readily applicable, courts will turn to public policy for guidance. Doing so necessarily favors imposing a duty of reasonable care where a "defendant's conduct poses an unreasonable and foreseeable risk of harm to persons or property."

Satterfield, 2008 WL 4135605, at *11 (quoting *McCall v. Wilder*, 913 S.W.2d 150,153 (Tenn. 1995)).

305, 308 (Tenn. 1998); *Hudson v. Gaitan*, 675 S.W.2d 699, 703 (Tenn. 1984); *Jackson v. Bradley*, 987 S.W.2d 852, 854 (Tenn. Ct. App. 1998)). This duty includes maintaining the premises in a reasonably safe condition either by removing or repairing potentially dangerous conditions or by helping customers and guests avoid injury by warning them of the existence of dangerous conditions that cannot, as a practical matter, be removed or repaired.[3] *Id.* (citing *Blair v. Campbell*, 924 S.W.2d 75, 76 (Tenn. 1996); *Eaton v. McLain*, 891 S.W.2d 587, 593-94 (Tenn. 1994)). A duty also attaches if the dangerous or defective condition was created by the owner or operator. *Jones v. Zayre, Inc.*, 600 S.W.2d 730, 732 (Tenn. Ct. App. 1980) (citing *Gargaro v. Kroger Grocery & Baking Co.*, 118 S.W.2d 561 (Tenn. Ct. App. 1938)).

Courts have declined to impose a legal duty on owners and occupiers of business premises "to protect against conditions from which no unreasonable risk of harm can be anticipated" and when the owner or operator "neither knew about nor could have discovered the condition in the exercise of reasonable care."[4] *Psillas*, 66 S.W.3d at 864-65 (citing *Rice*, 979 S.W.2d at 309); *see Prosser and Keeton on Torts*, supra, § 61 at 426. Therefore, as a matter of law, if the owner or its agent did not create the dangerous condition, the owner of a business premises *does not owe a duty* to its customers to protect them against conditions from which no unreasonable risk of harm can be anticipated and conditions of which the owner had no knowledge and could not have discovered with the exercise of reasonable care. *See Psillas*, 66 S.W.3d at 865; *see also Rice*, 979 S.W.2d at 309.

Ms. White does not contend that an agent or employee of BI-LO caused the spice bottle to be on the floor or that anyone had actual knowledge that it was on the floor prior to her fall. Her contention is that BI-LO had constructive notice that the spice bottle was on the floor, and therefore, BI-LO owed her the affirmative duty to remove the spice bottle prior to her fall.

The burden of establishing constructive notice, i.e., whether the spice bottle on the floor could have been discovered by BI-LO in the exercise of reasonable care, falls on Ms. White. *See Jones*, 600 S.W.2d 730, 732; *see also Williams v. Linkscorp Tennessee Six, L.L.C.,* 212 S.W.3d 293, 296 (Tenn. Ct. App. 2006). If she succeeds in establishing that BI-LO had constructive notice of the bottle on the floor, then BI-LO owed a duty of care to Ms. White to remove the bottle or otherwise remedy the dangerous condition. *Id*. If, however, Ms. White fails to demonstrate that BI-LO had constructive notice of the bottle in the floor before she fell, then BI-LO did not owe her a duty to remedy the condition. *Id*.

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[3] The traditional rationale for imposing this duty was the owner's superior knowledge of conditions on the premises. *Psillas*, 66 S.W.3d at 864 (citing *Dobson v. State*, 23 S.W.3d 324, 330 (Tenn. Ct. App. 1999)); *see also Kendall Oil v. Payne*, 293 S.W.2d 40, 42 (Tenn. Ct. App. 1955).

[4] A condition does not constitute an unreasonable risk unless it is established that "the foreseeable probability and gravity of the harm outweigh the burden imposed on the defendant to engage in alternative conduct that would have prevented the harm." *Psillas*, 66 S.W.3d at 865 (citing *McCall*, 913 S.W.2d at 153; *Jackson*, 987 S.W.2d at 854; *Basily v. Rain*, 29 S.W.3d 879, 883 (Tenn. Ct. App. 2000)).

Ms. White can establish constructive notice by showing that *the dangerous or defective condition existed for such a length of time* that BI-LO knew, or in the exercise of ordinary care should have known, of its existence. *Williams*, 212 S.W.3d at 296 (citing *Simmons v. Sears, Roebuck and Co.*, 713 S.W.2d 640, 641-42 (Tenn. 1986)); *see also Wilson v. Target Stores, Inc.*, No. 03A01-9209-CV-00322, 1993 WL 30617, at *2 (Tenn. Ct. App. 1993) (quoting *Simmons*, 713 S.W.2d at 641) (stating "the general rule is that a proprietor of a business has a duty to a customer 'to exercise reasonable care to keep the premises in a reasonably safe and suitable condition, including the duty of removing or warning against a dangerous condition traceable to persons for whom the proprietor is not responsible . . . if the circumstances of time and place are such that the proprietor should have become aware of such condition"').

While Ms. White contends that BI-LO had constructive notice because the spice bottle was on the floor "for such a length of time that the defendant knew, or in the exercise of ordinary care should have known of its existence," she presented no evidence to support this conclusory contention. Conversely, BI-LO presented evidence to negate the contention that it had constructive notice. BI-LO presented an affidavit of its store manager along with an inspection log, which established that the store manager conducted hourly inspections of the aisles, and that the store manager conducted a sweep of the aisle nineteen minutes prior to Ms. White's fall during which he found the aisle clean and free of merchandise and debris.[5] Because Ms. White presented no evidence to contradict the evidence presented by BI-LO, its evidence went undisputed.

Therefore, based on the evidence in the record, the spice bottle may have been on the floor as little as a few seconds or up to nineteen minutes. There is no bright-line test, however, to determine the minimum or maximum minutes a dangerous condition must be present in order to establish constructive notice. Instead, the period of time a dangerous condition may have existed is but one fact that must be viewed in the light of the entire circumstance relevant to the incident. *See Friar v. Kroger Co.*, No. 03A01-9710-CV-00470, 1998 WL 170140, at *3 (Tenn. Ct. App. Apr. 14, 1998) (citing *Paradiso v. Kroger Co.*, 499 S.W.2d 78, 79 (Tenn. Ct. App. 1973); *Allison v. Blount Nat'l Bank*, 390 S.W.2d 716, 719 (Tenn. Ct. App. 1965)). In this vein, the court should consider "the nature of the business, its size, the number of patrons, the nature of the danger, [and] its location along with the foreseeable consequences." *Id*.

Accordingly, in premises liability cases involving transitory, temporary conditions, such as a bottle on the floor in a store, the plaintiff must generally establish more than the mere existence of a potentially dangerous foreign substance on the floor. *See Id*.; *see also Self v. Wal-mart Stores, Inc.*, 885 F.2d 336, 339 (6th Cir. 1989). That was accomplished in another grocery store slip-and-fall case, the matter of *Friar v. Kroger*, 1998 WL 170140. The plaintiff in *Friar* slipped on gravy that had leaked from a broken glass jar on to the floor in one of the shopping aisles. *Id*. at *1. The plaintiff presented evidence that the spill had been present for several minutes, based on a witness' testimony, and that cardboard had been placed over the spill, but the condition was still dangerous.

[5] Our reliance on the facts of this case is for the purpose of determining if, as a matter of law, BI-LO owed a duty to Ms. White. *See Satterfield*, 2008 WL 4135605, at *13.

Id. at *2. There was also evidence that the store manager, who usually performed fifteen to twenty inspections of the premises each day, had only inspected the area three or four times on the day in question, and there was no record when the last inspection had occurred. *Id*. at *7. Based upon the evidence introduced by the plaintiff, this court found the defendant, Kroger, had constructive notice of the spill and, therefore, Kroger owed the plaintiff the duty to remedy the situation. *Id*. at *6.

Unlike the plaintiff in *Friar*, Ms. White has failed to establish more than the mere existence of a potentially dangerous object on the floor. The significance of failing to establish more than the mere existence of a dangerous object on the floor is apparent from this court's holdings in *Frazier v. Revco Discount Drug Ctrs., Inc.*, *Blakley v. Oakwood Markets, Inc*., and *Basily v. Rain, Inc.*, each of which we discuss below.

In *Frazier*, the plaintiff failed to present evidence to support the allegation that the drug store had actual or constructive notice of the presence of liquid on the floor of its store aisle. *Frazier v. Revco Discount Drug Ctrs., Inc.*, No. 03A01-9206CV219, 1992 WL 247792, at *1 (Tenn. Ct. App. October 2, 1992). Plaintiff presented no evidence that the store had actual knowledge of the liquid on the floor and no evidence of how long the liquid had been present on the floor, but merely alleged that the store had constructive notice. *Id*. To negate this allegation of constructive notice, the defendant introduced evidence to establish that the floor had been swept thirty minutes prior to the plaintiff's fall and that no liquid was present at that time. *Id*. Based on these facts, this court concluded that the defendant was entitled to summary judgment as a matter of law. *Id*. at *2.

In *Blakley*, the plaintiff fell after stepping on a soft drink bottle cap that was on the floor in an aisle of the market. *Blakley v. Oakwood Markets, Inc*., No. 277, 1990 WL 73899, at *1 (Tenn. Ct. App. June 6, 1990). The plaintiff made the assertion that the defendant knew or should have known the condition existed, but presented no evidence to support that contention. *Id*. For its part, the defendant introduced evidence which established that the store made hourly inspections, that a daily log was maintained to show the inspections were timely made, and that thirty minutes prior to the incident the assistant manager had performed an inspection and no bottle caps were on the floor. *Id*. at *2. Based on these facts, this court concluded that the evidence was not sufficient to establish constructive notice. *Id*.

In *Basily*, the plaintiff, a resident of an apartment complex, sued the owner of the apartment complex and Rains, Inc., the company that maintained the lawn sprinkler system at the apartment complex, for injuries sustained after she tripped over a raised sprinkler head located near the sidewalk. *Basily v. Rain, Inc.*, 29 S.W.3d 879, 881 (Tenn. Ct. App. 2000). The system was designed so that the sprinkler heads, which were flush with the ground when not in use, would automatically rise when the system was operating and automatically retract when the water was turned off. *Id*. It was undisputed the sprinkler head Ms. Basily tripped over had failed to retract; however, there was no evidence how long the sprinkler head had been in that position. *Id*., at 885. The dispositive issue on appeal was whether the owner of the complex or Rains, Inc. had constructive notice of the condition. *Id*. at 884. The relevant facts revealed that Rains, Inc.'s employees "were still winterizing the irrigation system when Ms. Basily left her apartment on the morning she fell. According to the

uncontradicted evidence, they did not complete their work until 11:30 a.m., approximately thirty minutes after Ms. Basily fell." *Id*. Based on these facts, this court held, "Without evidence regarding the sequence in which the work was performed, there is no reliable way to determine when or if the work on the zone that included the sprinklers near Ms. Basily's apartment had been completed when Ms. Basily fell. The record also contains no evidence from which a trier of fact could decide how long the sprinkler had been stuck in its operating position." *Basily*, 29 S.W.3d at 884-85. Significantly, the court went on to state that the plaintiff had the burden of proving that the sprinkler head had been stuck long enough to have been discovered and corrected by either defendant had they been exercising due care. *Id*. at 885. The court found that she had failed to demonstrate that the condition, the raised sprinkler head that was stuck in its operating position, had existed long enough for the defendants to have discovered it in the exercise of reasonable care. *Id*. Based on the foregoing facts and analysis, the court concluded that the defendants were entitled to summary judgment "because the record contains no evidence regarding the length of time the sprinkler was stuck before Ms. Basily tripped over it." *Id.*

As was the case in *Frazier*, *Blakley* and *Basily*, Ms. White failed to present evidence concerning how long the condition at BI-LO existed. We do not infer that an affirmative duty is owed in every circumstance; to the contrary, unless it is established that the owner, its agents, or its employees created the dangerous condition, then the owner of a business premises *does not owe a duty* to its customers to protect them against conditions from which no unreasonable risk of harm can be anticipated and conditions of which the owner had no knowledge and could not have discovered with the exercise of reasonable care. Unsubstantiated conclusory assertions are insufficient to establish a duty and there is no evidence in the record upon which to conclude that BI-LO owed Ms. White a duty to protect her from a condition existing in one of its aisles of which it had no actual or constructive knowledge.

Because BI-LO negated an essential element of Ms. White's claim, that of duty, it is entitled to summary judgment as a matter of law.[6]

[6]In her brief, Ms. White argued that the trial court failed to consider whether this dangerous condition was a common occurrence, whether the shelf was stacked improperly, and whether an adequate inspection had been made in order to find constructive notice. However, these are issues that Ms. White raises for the first time on her appeal. These issues were not raised within her pleadings and were not considered by the trial court. In both her Complaint and her Defense to the Motion for Summary Judgment, Ms. White maintained that BI-LO was liable based on the theory they had constructive notice due to the existence of a sufficient period of time during which they could discover the spice bottle. Moreover, there are no facts within the record upon which to base these considerations. Under T.R.A.P. 13(c), only facts which were established by the trial court or set forth in the record will be considered on appeal.

IN CONCLUSION

The judgment of the trial court is affirmed,[7] and this matter is remanded with costs of appeal assessed against Mary White, Appellant.

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FRANK G. CLEMENT, JR., JUDGE

[7] The trial court granted summary judgment on the basis the defendant had not breached its duty of care. We have determined the plaintiff failed to establish that the defendant owed the plaintiff a duty of care. The result is the same, that the defendant is entitled to summary judgment. We may affirm a judgment upon different grounds than those relied on by the trial court when the trial court has reached the correct result. *See Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn.1986); *Kaylor v. Bradley*, 912 S.W.2d 728, 735 n. 6 (Tenn.Ct.App.1995); *Clark v. Metropolitan Gov't*, 827 S.W.2d 312, 317 (Tenn.Ct.App.1991).